19-3-101. Short title.

This chapter is known as the "Radiation Control Act."

Enacted by Chapter 112, 1991 General Session

19-3-102. Definitions.

As used in this chapter:

(1) "Board" means the Radiation Control Board created under Section 19-1-106.

(2) (a) "Broker" means a person who performs one or more of the following functions for a generator:

(i) arranges for transportation of the radioactive waste;

(ii) collects or consolidates shipments of radioactive waste; or

(iii) processes radioactive waste in some manner.

(b) "Broker" does not include a carrier whose sole function is to transport the radioactive waste.

(3) "Byproduct material" has the same meaning as in 42 U.S.C. Sec. 2014(e)(2).

(4) "Class B and class C low-level radioactive waste" has the same meaning as in 10 CFR 61.55.

(5) "Director" means the director of the Division of Radiation Control.

(6) "Division" means the Division of Radiation Control, created in Subsection 19-1-105(1)(d).

(7) "Generator" means a person who:

(a) possesses any material or component:

(i) that contains radioactivity or is radioactively contaminated; and

(ii) for which the person foresees no further use; and

(b) transfers the material or component to:

(i) a commercial radioactive waste treatment or disposal facility; or

(ii) a broker.

(8) (a) "High-level nuclear waste" means spent reactor fuel assemblies, dismantled nuclear reactor components, and solid and liquid wastes from fuel reprocessing and defense-related wastes.

(b) "High-level nuclear waste" does not include medical or institutional wastes, naturally-occurring radioactive materials, or uranium mill tailings.

(9) (a) "Low-level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release.

(b) "Low-level radioactive waste" does not include waste containing more than 100 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(10) "Radiation" means ionizing and nonionizing radiation, including gamma rays, X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.

(11) "Radioactive" means any solid, liquid, or gas which emits radiation spontaneously from decay of unstable nuclei.

Amended by Chapter 360, 2012 General Session

19-3-103. Radiation Control Board -- Members -- Organization -- Meetings -- Per diem and expenses.

(1) The board consists of the following nine members:

(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:

(i) the executive director; or

(ii) an employee of the department designated by the executive director; and

(b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:

(i) one representative who is:

(A) a health physicist; or

(B) a professional employed in the field of radiation safety;

(ii) two government representatives who do not represent the federal government;

(iii) one representative from the radioactive waste management industry;

(iv) one representative from the uranium milling industry;

(v) one representative from the regulated industry who is knowledgeable about radiation control regulatory issues;

(vi) one representative from the public who represents:

(A) an environmental nongovernmental organization; or

(B) a nongovernmental organization that represents community interests and does not represent industry interests; and

(vii) one representative from the public who is trained and experienced in public health.

(2) A member of the board shall:

(a) be knowledgeable about radiation protection, as evidenced by a professional degree, a professional accreditation, or documented experience;

(b) be a resident of Utah;

(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and

(d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).

(3) No more than five appointed members shall be from the same political party.

(4) (a) The governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.

(c) (i) Notwithstanding Subsection (4)(a), the term of a board member who is appointed before July 1, 2012, shall expire on June 30, 2012.

(ii) On July 1, 2012, the governor shall appoint or reappoint board members in accordance with this section.

(5) Each board member is eligible for reappointment to more than one term.

(6) Each board member shall continue in office until the expiration of his term and until a successor is appointed, but not more than 90 days after the expiration of his term.

(7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor, after considering recommendations by the department and with the consent of the Senate.

(8) The board shall annually elect a chair and vice chair from its members.

(9) The board shall meet at least quarterly. Other meetings may be called by the chair, by the director, or upon the request of three members of the board.

(10) Reasonable notice shall be given each member of the board prior to any meeting.

(11) Five members constitute a quorum. The action of a majority of the members present is the action of the board.

(12) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 360, 2012 General Session

19-3-103.5. Board authority and duties.

(1) The board may:

(a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary to implement the provisions of the Radiation Control Act;

(b) recommend that the director:

(i) issue orders necessary to enforce the provisions of this part;

(ii) enforce the orders by appropriate administrative and judicial proceedings; or

(iii) institute judicial proceedings to secure compliance with this part;

(c) (i) hold a hearing that is not an adjudicative proceeding; or

(ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding;

(d) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this part; or

(e) order the director to impound radioactive material in accordance with Section 19-3-111.

(2) The board shall:

(a) prepare a radioactive waste management plan in compliance with Section 19-3-107 as soon as practicable;

(b) promote the planning and application of pollution prevention and radioactive waste minimization measures to prevent the unnecessary waste and depletion of natural resources;

(c) to ensure compliance with applicable statutes and regulations:

(i) review a settlement negotiated by the director in accordance with Subsection 19-3-108(3)(b) that requires a civil penalty of $25,000 or more; and

(ii) approve or disapprove the settlement;

(d) submit an application to the U.S. Food and Drug Administration for approval as an accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of 1992;

(e) accredit mammography facilities, pursuant to approval as an accrediting body from the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of 1992; and

(f) review the qualifications of, and issue certificates of approval to, individuals who:

(i) survey mammography equipment; or

(ii) oversee quality assurance practices at mammography facilities.

(3) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-3-108:

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

(4) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

Amended by Chapter 360, 2012 General Session

19-3-103.7. Prohibition of certain radioactive wastes.

No entity may accept in the state or apply for a license to accept in the state for commercial storage, decay in storage, treatment, incineration, or disposal:

(1) class B or class C low-level radioactive waste; or

(2) radioactive waste having a higher radionuclide concentration than the highest radionuclide concentration allowed under licenses existing on February 25, 2005, that have met all the requirements of Section 19-3-105.

Amended by Chapter 10, 2005 General Session

19-3-104. Registration and licensing of radiation sources by department -- Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.

(1) As used in this section:

(a) "Decommissioning" includes financial assurance.

(b) "Source material" and "byproduct material" have the same definitions as in 42 U.S.C.A. 2014, Atomic Energy Act of 1954, as amended.

(2) The division may require the registration or licensing of radiation sources that constitute a significant health hazard.

(3) All sources of ionizing radiation, including ionizing radiation producing machines, shall be registered or licensed by the department.

(4) The board may make rules:

(a) necessary for controlling exposure to sources of radiation that constitute a significant health hazard;

(b) to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government;

(c) to establish:

(i) board accreditation requirements and procedures for mammography facilities; and

(ii) certification procedure and qualifications for persons who survey mammography equipment and oversee quality assurance practices at mammography facilities; and

(d) as necessary regarding the possession, use, transfer, or delivery of source and byproduct material and the disposal of byproduct material to establish requirements for:

(i) the licensing, operation, decontamination, and decommissioning, including financial assurances; and

(ii) the reclamation of sites, structures, and equipment used in conjunction with the activities described in this Subsection (4).

(5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and byproduct material and the disposal of byproduct material at uranium mills or commercial waste facilities, as provided in this Subsection (5).

(b) On and after January 1, 2003 through March 30, 2003:

(i) $6,667 per month for uranium mills or commercial sites disposing of or reprocessing byproduct material; and

(ii) $4,167 per month for those uranium mills the director has determined are on standby status.

(c) On and after March 31, 2003 through June 30, 2003 the same fees as in Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation on or before March 30, 2003.

(d) If the Nuclear Regulatory Commission does not grant the amendment for state agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and are not required to be paid until on and after the later date of:

(i) October 1, 2003; or

(ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation.

(e) For the payment periods beginning on and after July 1, 2003, the department shall establish the fees required under Subsection (5)(a) under Section 63J-1-504, subject to the restrictions under Subsection (5)(d).

(f) The division shall deposit fees it receives under this Subsection (5) into the Environmental Quality Restricted Account created in Section 19-1-108.

(6) (a) The division shall assess fees for registration, licensing, and inspection of radiation sources under this section.

(b) The division shall comply with the requirements of Section 63J-1-504 in assessing fees for licensure and registration.

(7) The division shall coordinate its activities with the Department of Health rules made under Section 26-21a-203.

(8) (a) Except as provided in Subsection (9), the board may not adopt rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to regulation of sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances.

(b) In adopting those rules, the board may incorporate corresponding federal regulations by reference.

(9) (a) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (8) only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state.

(b) Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

(10) (a) The board shall by rule:

(i) authorize independent qualified experts to conduct inspections required under this chapter of x-ray facilities registered with the division; and

(ii) establish qualifications and certification procedures necessary for independent experts to conduct these inspections.

(b) Independent experts under this Subsection (10) are not considered employees or representatives of the division or the state when conducting the inspections.

(11) (a) The board may by rule establish criteria for siting commercial low-level radioactive waste treatment or disposal facilities, subject to the prohibition imposed by Section 19-3-103.7.

(b) Subject to Subsection 19-3-105(10), any facility under Subsection (11)(a) for which a radioactive material license is required by this section shall comply with those criteria.

(c) Subject to Subsection 19-3-105(10), a facility may not receive a radioactive material license until siting criteria have been established by the board. The criteria also apply to facilities that have applied for but not received a radioactive material license.

(12) The board shall by rule establish financial assurance requirements for closure and postclosure care of radioactive waste land disposal facilities, taking into account existing financial assurance requirements.

Amended by Chapter 360, 2012 General Session

19-3-105. Definitions -- Legislative and gubernatorial approval required for radioactive waste license -- Exceptions -- Application for new, renewed, or amended license.

(1) As used in this section:

(a) "Alternate feed material" has the same definition as provided in Section 59-24-102.

(b) "Approval application" means an application by a radioactive waste facility regulated under this chapter or Title 19, Chapter 5, Water Quality Act, for a permit, license, registration, certification, or other authorization.

(c) (i) "Class A low-level radioactive waste" means:

(A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and

(B) radium-226 up to a maximum radionuclide concentration level of 10,000 picocuries per gram.

(ii) "Class A low-level radioactive waste" does not include:

(A) uranium mill tailings;

(B) naturally occurring radioactive materials; or

(C) the following radionuclides if classified as "special nuclear material" under the Atomic Energy Act of 1954, 42 U.S.C. 2014:

(I) uranium-233; and

(II) uranium-235 with a radionuclide concentration level greater than the concentration limits for specific conditions and enrichments established by an order of the Nuclear Regulatory Commission:

(Aa) to ensure criticality safety for a radioactive waste facility in the state; and

(Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special nuclear material exemption order.

(d) (i) "Radioactive waste facility" or "facility" means a facility that receives, transfers, stores, decays in storage, treats, or disposes of radioactive waste:

(A) commercially for profit; or

(B) generated at locations other than the radioactive waste facility.

(ii) "Radioactive waste facility" does not include a facility that receives:

(A) alternate feed material for reprocessing; or

(B) radioactive waste from a location in the state designated as a processing site under 42 U.S.C. 7912(f).

(e) "Radioactive waste license" or "license" means a radioactive material license issued by the director under Subsection 19-3-108(2)(d), to own, construct, modify, or operate a radioactive waste facility.

(2) The provisions of this section are subject to the prohibition under Section 19-3-103.7.

(3) Subject to Subsection (8), a person may not own, construct, modify, or operate a radioactive waste facility without:

(a) having received a radioactive waste license for the facility;

(b) meeting the requirements established by rule under Section 19-3-104;

(c) the approval of the governing body of the municipality or county responsible for local planning and zoning where the radioactive waste is or will be located; and

(d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the approval of the governor and the Legislature.

(4) Subject to Subsection (8), a new radioactive waste license application, or an

application to renew or amend an existing radioactive waste license, is subject to the requirements of Subsections (3)(b) through (d) if the application, renewal, or amendment:

(a) specifies a different geographic site than a previously submitted application;

(b) would cost 50% or more of the cost of construction of the original radioactive waste facility or the modification would result in an increase in capacity or throughput of a cumulative total of 50% of the total capacity or throughput which was approved in the facility license as of January 1, 1990, or the initial approval facility license if the initial license approval is subsequent to January 1, 1990; or

(c) requests approval to receive, transfer, store, decay in storage, treat, or dispose of radioactive waste having a higher radionuclide concentration limit than allowed, under an existing approved license held by the facility, for the specific type of waste to be received, transferred, stored, decayed in storage, treated, or disposed of.

(5) The requirements of Subsection (4)(c) do not apply to an application to renew or amend an existing radioactive waste license if:

(a) the radioactive waste facility requesting the renewal or amendment has received a license prior to January 1, 2004; and

(b) the application to renew or amend its license is limited to a request to approve the receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level radioactive waste.

(6) A radioactive waste facility which receives a new radioactive waste license after May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license application, renewal, or amendment that requests approval to receive, transfer, store, decay in storage, treat, or dispose of radioactive waste not previously approved under an existing license held by the facility.

(7) If the board finds that approval of additional radioactive waste license applications, renewals, or amendments will result in inadequate oversight, monitoring, or licensure compliance and enforcement of existing and any additional radioactive waste facilities, the board shall suspend acceptance of further applications for radioactive waste licenses. The board shall report the suspension to the Legislative Management Committee.

(8) The requirements of Subsections (3)(c) and (d) and Subsection 19-3-104(11) do not apply to:

(a) a radioactive waste license that is in effect on December 31, 2006, including all amendments to the license that have taken effect as of December 31, 2006;

(b) a license application for a facility in existence as of December 31, 2006, unless the license application includes an area beyond the facility boundary approved in the license described in Subsection (8)(a); or

(c) an application to renew or amend a license described in Subsection (8)(a), unless the renewal or amendment includes an area beyond the facility boundary approved in the license described in Subsection (8)(a).

(9) (a) The director shall review an approval application to determine whether the application complies with the requirements of this chapter and the rules of the board.

(b) Within 60 days after the day on which the director receives an approval application described in Subsection (10)(a)(ii) or (iii), the director shall:

(i) determine whether the application is complete and contains all the information necessary to process the application for approval; and

(ii) (A) issue a notice of completeness to the applicant; or

(B) issue a notice of deficiency to the applicant and list the additional information necessary to complete the application.

(c) The director shall review information submitted in response to a notice of deficiency within 30 days after the day on which the director receives the information.

(10) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) categorize approval applications as follows:

(i) approval applications that:

(A) are administrative in nature;

(B) require limited scrutiny by the director; and

(C) do not require public input;

(ii) approval applications that:

(A) require substantial scrutiny by the director;

(B) require public input; and

(C) are not described in Subsection (10)(a)(iii); and

(iii) approval applications for:

(A) the granting or renewal of a radioactive waste license;

(B) the granting or renewal of a groundwater permit issued by the director for a radioactive waste facility;

(C) an amendment to a radioactive waste license, or a groundwater permit, that allows the design and approval of a new disposal cell;

(D) an amendment to a radioactive waste license or groundwater discharge permit for a radioactive waste facility to eliminate groundwater monitoring; and

(E) a radioactive waste facility closure plan;

(b) provide time periods for the director to review, and approve or deny, an application described in Subsection (10)(a) as follows:

(i) for applications categorized under Subsection (10)(a)(i), within 30 days after the day on which the director receives the application;

(ii) for applications categorized under Subsection (10)(a)(ii), within 180 days after the day on which the director receives the application;

(iii) for applications categorized under Subsection (10)(a)(iii), as follows:

(A) for a new radioactive waste license, within 540 days after the day on which the director receives the application;

(B) for a new groundwater permit issued by the director for a radioactive waste facility consistent with the provisions of Title 19, Chapter 5, Water Quality Act, within 540 days after the day on which the director receives the application;

(C) for a radioactive waste license renewal, within 365 days after the day on which the director receives the application;

(D) for a groundwater permit renewal issued by the director for a radioactive waste facility, within 365 days after the day on which the director receives the application;

(E) for an amendment to a radioactive waste license, or a groundwater permit, that allows the design and approval of a new disposal cell, within 365 days after the day

on which the director receives the application;

(F) for an amendment to a radioactive waste license, or a groundwater discharge permit, for a radioactive waste facility to eliminate groundwater monitoring, within 365 days after the day on which the director receives the application; and

(G) for a radioactive waste facility closure plan, within 365 days after the day on which the director receives the application;

(c) toll the time periods described in Subsection (10)(b):

(i) while an owner or operator of a facility responds to the director's request for information;

(ii) during a public comment period; or

(iii) while the federal government reviews the application; and

(d) require the director to prepare a detailed written explanation of the basis for the director's approval or denial of an approval application.

Amended by Chapter 330, 2013 General Session

19-3-106. Fee for commercial radioactive waste disposal or treatment.

(1) (a) An owner or operator of a commercial radioactive waste treatment or disposal facility that receives radioactive waste shall pay a fee as provided in Subsection (1)(b).

(b) (i) On or after July 1, 2010, but on or before June 30, 2011, the fee is equal to the sum of the following amounts:

(A) 30 cents per cubic foot of radioactive waste, other than 11e.(2) byproduct material, received at the facility for disposal or treatment; and

(B) $1 per curie of radioactive waste, other than 11e.(2) byproduct material, received at the facility for disposal or treatment.

(ii) On or after July 1, 2011, the fee shall be established by the department in accordance with Section 63J-1-504.

(iii) In the development of a fee schedule prepared under Subsection (1)(b)(ii), the department may conduct by no later than July 1, 2011, a review of the program costs and indirect costs of regulating radioactive waste in the state.

(iv) In addition to the process required by Section 63J-1-504, the department shall establish a fee that:

(A) is a flat fee, not based on the amount of waste treated or disposed of;

(B) provides for reasonable and timely oversight by the department; and

(C) adequately meets the needs of industry and the department, including allowing for the department to employ qualified personnel to appropriately oversee industry regulation.

(2) (a) The portion of the fee required under Subsection (1)(b)(i)(A) shall be calculated by multiplying the total cubic feet of waste, computed to the first decimal place, received during the calendar month by 30 cents.

(b) The portion of the fee required in Subsection (1)(b)(i)(B) shall be calculated by multiplying the total curies of waste, computed to the first decimal place, received during the calendar month by $1.

(3) (a) The owner or operator shall remit the fees imposed under this section to the department on or before the 15th day of the month following the month in which the

fee accrued.

(b) The department shall deposit the fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.

(c) The owner or operator shall submit to the department with the payment of the fee under this Subsection (3) a completed form as prescribed by the department that provides information the department requires to verify the amount of waste received and the fee amount for which the owner or operator is liable.

(4) The Legislature shall appropriate to the department money to cover the cost of radioactive waste disposal supervision.

(5) Radioactive waste that is subject to a fee under this section is not subject to a fee under Section 19-6-119.

Amended by Chapter 17, 2010 General Session

19-3-106.2. Fee for perpetual care and maintenance of commercial radioactive waste disposal facilities -- Radioactive Waste Perpetual Care and Maintenance Account created -- Contents -- Use of restricted account money -- Evaluation.

(1) As used in this section, "perpetual care and maintenance" means perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, as required by applicable laws, rules, and license requirements beginning 100 years after the date of final closure of the facility.

(2) (a) On and after July 1, 2002, the owner or operator of an active commercial radioactive waste treatment or disposal facility shall pay an annual fee of $400,000 to provide for the perpetual care and maintenance of the facility.

(b) The owner or operator shall remit the fee to the department on or before July 1 of each year.

(3) The department shall deposit fees received under Subsection (2) into the Radioactive Waste Perpetual Care and Maintenance Account created in Subsection (4).

(4) (a) There is created a restricted account within the General Fund known as the "Radioactive Waste Perpetual Care and Maintenance Account" to finance perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities, excluding sites within those facilities used for the disposal of byproduct material.

(b) The sources of revenue for the restricted account are:

(i) the fee imposed under this section; and

(ii) investment income derived from money in the restricted account.

(c) (i) The revenues for the restricted account shall be segregated into subaccounts for each commercial radioactive waste treatment or disposal facility covered by the restricted account.

(ii) Each subaccount shall contain:

(A) the fees paid by each owner or operator of a commercial radioactive waste treatment or disposal facility; and

(B) the associated investment income.

(5) The Legislature may appropriate money from the Radioactive Waste

Perpetual Care and Maintenance Account for:

(a) perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, beginning 100 years after the date of final closure of the facility; or

(b) maintenance or monitoring of, or implementing corrective action at, a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, before the end of 100 years after the date of final closure of the facility, if:

(i) the owner or operator is unwilling or unable to carry out postclosure maintenance, monitoring, or corrective action; and

(ii) the financial surety arrangements made by the owner or operator, including any required under applicable law, are insufficient to cover the costs of postclosure maintenance, monitoring, or corrective action.

(6) The money appropriated from the Radioactive Waste Perpetual Care and Maintenance Account for the purposes specified in Subsection (5)(a) or(b) at a particular commercial radioactive waste treatment or disposal facility may be appropriated only from the subaccount established under Subsection (4)(c) for the facility.

(7) The attorney general shall bring legal action against the owner or operator or take other steps to secure the recovery or reimbursement of the costs of maintenance, monitoring, or corrective action, including legal costs, incurred pursuant to Subsection (5)(b).

(8) The board shall direct an evaluation of the adequacy of the restricted account as required under Section 19-1-307.

(9) This section does not apply to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

Amended by Chapter 278, 2010 General Session

19-3-106.4. Generator site access permits.

(1) A generator or broker may not transfer radioactive waste to a commercial radioactive waste treatment or disposal facility in the state without first obtaining a generator site access permit from the director.

(2) The director may not grant a generator site access permit to a generator or broker unless the generator or broker agrees to grant the division reasonable access to its facilities for the inspection and verification of radioactive waste using Nuclear Regulatory Commission approved accountability guidelines.

(3) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing a generator site access permit program.

(4) (a) Except as provided in Subsection (4)(b), the division shall establish fees for generator site access permits in accordance with Section 63J-1-504.

(b) On and after July 1, 2001 through June 30, 2002, the fees are:

(i) $1,300 for generators transferring 1,000 or more cubic feet of radioactive waste per year;

(ii) $500 for generators transferring less than 1,000 cubic feet of radioactive waste per year; and

(iii) $5,000 for brokers.

(c) The division shall deposit fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.

(5) This section does not apply to a generator or broker transferring radioactive waste to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

Amended by Chapter 330, 2013 General Session

19-3-107. State radioactive waste plan.

(1) The board shall prepare a state plan for management of radioactive waste by July 1, 1993.

(2) The plan shall:

(a) provide an estimate of radioactive waste capacity needed in the state for the next 20 years;

(b) assess the state's ability to minimize waste and recycle;

(c) evaluate radioactive waste treatment and disposal options, as well as radioactive waste needs and existing capacity;

(d) evaluate facility siting, design, and operation;

(e) review funding alternatives for radioactive waste management; and

(f) address other radioactive waste management concerns that the board finds appropriate for the preservation of the public health and the environment.

Renumbered and Amended by Chapter 112, 1991 General Session

19-3-108. Powers and duties of director.

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.

(2) The director shall:

(a) develop programs to promote and protect the public from radiation sources in the state;

(b) advise, consult, cooperate with, and provide technical assistance to other agencies, states, the federal government, political subdivisions, industries, and other persons in carrying out the provisions of the Radiation Control Act;

(c) receive specifications or other information relating to licensing applications for radioactive materials or registration of radiation sources for review, approval, disapproval, or termination;

(d) issue permits, licenses, registrations, certifications, and other administrative authorizations;

(e) review and approve plans;

(f) assess penalties in accordance with Section 19-3-109;

(g) impound radioactive material under Section 19-3-111;

(h) issue orders necessary to enforce the provisions of this part, enforce the orders by appropriate administrative and judicial proceedings, or institute judicial proceedings to secure compliance with this part; and

(i) as authorized by the board and subject to the provisions of this chapter, act

as executive secretary of the board under the direction of the chairman of the board.

(3) The director may:

(a) cooperate with any person in studies, research, or demonstration projects regarding radioactive waste management or control of radiation sources;

(b) subject to Subsection 19-3-103.5(2)(c), settle or compromise any civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter; or

(c) authorize employees or representatives of the department to enter, at reasonable times and upon reasonable notice, in and upon public or private property for the purpose of inspecting and investigating conditions and records concerning radiation sources.

Amended by Chapter 360, 2012 General Session

19-3-109. Civil penalties -- Appeals.

(1) A person who violates a provision of this part, a rule or order issued under the authority of this part, or the terms of a license, permit, or registration certificate issued under the authority of this part is subject to a civil penalty not to exceed $10,000 for each violation.

(2) The director may assess and make a demand for payment of a penalty under this section and may compromise or remit that penalty.

(3) In order to make demand for payment of a penalty assessed under this section, the director shall issue a notice of agency action, specifying, in addition to the requirements for notices of agency action contained in Title 63G, Chapter 4, Administrative Procedures Act:

(a) the date, facts, and nature of each act or omission charged;

(b) the provision of the statute, rule, order, license, permit, or registration certificate that is alleged to have been violated;

(c) each penalty that the director proposes to impose, together with the amount and date of effect of that penalty; and

(d) that failure to pay the penalty or respond may result in a civil action for collection.

(4) A person notified according to Subsection (3) may request an adjudicative proceeding.

(5) Upon request by the director, the attorney general may institute a civil action to collect a penalty imposed under this section.

(6) (a) Except as provided in Subsection (6)(b), the department shall deposit all money collected from civil penalties imposed under this section into the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Amended by Chapter 330, 2013 General Session

19-3-110. Criminal penalties.

(1) Any person who knowingly violates any provision of Sections 19-3-104 through 19-3-113 or lawful orders or rules adopted by the department under those sections shall in a criminal proceeding:

(a) for the first violation, be guilty of a class B misdemeanor; and

(b) for a subsequent similar violation within two years, be guilty of a third degree felony.

(2) In addition, a person is liable for any expense incurred by the department in removing or abating any violation.

(3) Conviction under Sections 19-3-104 through 19-3-113 does not relieve the person convicted from civil liability for any act which was also a violation of the public health laws.

Amended by Chapter 271, 1998 General Session

19-3-111. Impounding of radioactive material.

(1) The director may impound the radioactive material of any person if:

(a) the material poses an imminent threat or danger to the public health or safety; or

(b) that person is violating:

(i) any provision of Sections 19-3-104 through 19-3-113;

(ii) any rules or orders enacted or issued under the authority of those sections; or

(iii) the terms of a license, permit, or registration certificate issued under the authority of those sections.

(2) Before any dispositive action may be taken with regard to impounded radioactive materials, the director shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act and Section 19-1-301.

Amended by Chapter 360, 2012 General Session

19-3-112. Notification by the department to certain persons of release of radiation from Nevada Test Site -- Notification to certain news outlets.

(1) When informed by the United States Department of Energy of any release of radiation exceeding the Nuclear Regulatory Commission's limits for unrestricted use in air or water from the Nevada Test Site which is detected outside its boundaries, the department shall, unless prohibited by federal law, immediately convey to the persons specified in Subsection (2) all information that is made available to it, including:

(a) the date;

(b) the time and duration of each release of radiation;

(c) estimates of total amounts of radiation released;

(d) the types and amounts of each isotope detected off-site;

(e) the locations of monitoring stations detecting off-site radiation; and

(f) current and projected wind direction, wind velocity, and precipitation for the region.

(2) Unless prohibited by federal law, the department shall provide the

information required under Subsection (1) to the following:

(a) members of the Utah congressional delegation or their designated representatives;

(b) the director of the Division of Emergency Management;

(c) the attorney general;

(d) the regional director of the Federal Emergency Management Agency;

(e) the regional director of the National Oceanic and Atmospheric Administration;

(f) the executive director of the Utah League of Cities and Towns;

(g) the executive director of the Department of Health; and

(h) the chairpersons of the county commissions of affected counties.

(3) If the state is informed by the United States Department of Energy that any radiation released from the Nevada Test Site has been detected by the United States Department of Energy or United States Environmental Protection Agency or the department within the boundaries of the state of Utah, the department shall, unless prohibited by federal law, immediately provide all information available to it as specified in Subsection (1) to the Associated Press and United Press International outlets in the state.

Amended by Chapter 55, 2011 General Session

19-3-113. Federal-state agreement regarding radiation control.

(1) The governor, on behalf of the state, may enter into agreements with the federal government providing for discontinuation of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by the state, pursuant to Section 19-3-104.

(2) Any person who, on the effective date of an agreement under Subsection (1), possesses a license issued by the federal government is considered to possess a federal license pursuant to a license issued by the department which shall expire either 90 days after receipt from the department of a notice of expiration of the license, or on the date of expiration specified in the federal license, whichever is earlier.

Renumbered and Amended by Chapter 112, 1991 General Session

19-3-201. Interstate Compact on Low-level Radioactive Waste -- Policy and purpose of compact.

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of the wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide

the means for a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

Renumbered and Amended by Chapter 112, 1991 General Session

19-3-201.1. Definitions.

As used in this compact:

(1) "Facility" means any site, location, structure, or property used or to be used for the storage, treatment, or disposal of low-level waste, excluding federal waste facilities.

(2) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(3) "Host state" means a state in which a facility is located.

(4) (a) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release.

(b) "Low-level waste" does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

Enacted by Chapter 314, 2001 General Session

19-3-202. Practices of party states regarding low-level waste shipments -- Fees for inspections.

(1) Each party state agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state including:

(a) maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(b) periodic unannounced inspection of the premises of the generators and the waste management activities on the premises;

(c) authorization of the containers in which the waste may be shipped, and a requirement that generators use only the type of containers authorized by the state;

(d) assurance that inspections of the carriers which transport the waste are conducted by proper authorities, and appropriate enforcement action taken for violations; and

(e) after receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, taking appropriate action to assure that the violations do not recur including the inspection of every individual low-level waste shipment by that generator.

(2) Each party state may impose fees upon generators and shippers to recover

the cost of the inspections and other practices under this compact.

(3) Nothing in this section limits any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this section.

Renumbered and Amended by Chapter 112, 1991 General Session

19-3-203. Acceptance of low-level waste by facilities in party states -- Requirements for acceptance of waste generated outside region of party states -- Cooperation in determining site of facility required within region of party states -- Allowance of access to low-level waste and hazardous chemical waste disposal facilities by certain party states -- Establishment of fees and requirements by host states.

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of that party state's own low-level waste, shall accept low-level waste generated in any party state if the waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Section 19-3-204.

(3) Until Subsection (2) takes effect, facilities located in any party state may accept low-level waste generated outside of any of the party states only if the waste is accompanied by a certificate of compliance issued by an official of the state in which the waste shipment originated. The certificate shall be in the form required by the host state, and shall contain at least the following:

(a) the generator's name and address;

(b) a description of the contents of the low-level waste container;

(c) a statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his or her agent or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations;

(d) additional requirements imposed by the host state; and

(e) a binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of the waste during shipment or after the waste reaches the facility.

(4) (a) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that may be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any party state as the host of the facilities on a permanent basis.

(b) Each party state further agrees that decisions regarding low-level waste management facilities in its region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) (a) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management.

Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to the facilities by generators within other party states.

(b) Nothing in this compact prevents any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of the facilities, so long as the action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility, to assure that closure, perpetual care, maintenance, and contingency requirements are met including adequate bonding.

Renumbered and Amended by Chapter 112, 1991 General Session

19-3-204. Governor to designate state official to administer compact -- Designated officials comprise northwest low-level waste compact committee -- Meetings of committee -- Duties relating to existing regulations -- Authority to make arrangements with entities outside region of party states.

(1) The governor of each party state shall designate one state official as the person responsible for administration of this compact. The officials so designated shall together comprise the northwest low-level waste compact committee.

(2) The committee shall meet as required to consider matters arising under this compact.

(3) The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in the regulations.

(4) Notwithstanding any provision of Section 19-3-203 to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprised of the party states for access to facilities on terms and conditions the committee considers appropriate. However, a two-thirds vote of all members is required, including the affirmative vote of the member of any party state in which a facility affected by the arrangement is located, for the committee to enter into an arrangement.

Renumbered and Amended by Chapter 112, 1991 General Session

19-3-205. Eligible party states -- Requirements regarding joinder and withdrawal from compact -- Consent of Congress.

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact becomes effective upon enactment into law by that party, but it is not initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect under Subsection (1), any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall

cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Section 19-3-203 takes effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five-year period.

Renumbered and Amended by Chapter 112, 1991 General Session

19-3-206. Direction to compact committee member.

The Utah compact committee member designated under Section 19-3-204 may not bring to the committee for approval and shall vote to disapprove any arrangement under Subsection 19-3-204(4) for a facility to receive class B or class C low-level radioactive waste for commercial storage, decay in storage, treatment, incineration, or disposal within the state.

Enacted by Chapter 10, 2005 General Session

19-3-301. Restrictions on nuclear waste placement in state.

(1) The placement, including transfer, storage, decay in storage, treatment, or disposal, within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste is prohibited.

(2) Notwithstanding Subsection (1) the governor, after consultation with the county executive and county legislative body of the affected county and with concurrence of the Legislature, may specifically approve the placement as provided in this part, but only if:

(a) (i) the federal Nuclear Regulatory Commission issues a license, pursuant to the Nuclear Waste Policy Act, 42 U.S.C.A. 10101 et seq., or the Atomic Energy Act, 42 U.S.C.A. 2011 et seq., for the placement within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste; and

(ii) the authority of the federal Nuclear Regulatory Commission to grant a license under Subsection (2)(a)(i) is clearly upheld by a final judgment of a court of competent jurisdiction; or

(b) an agency of the federal government is transporting the waste, and all state and federal requirements to proceed with the transportation have been met.

(3) The requirement for the approval of a final court of competent jurisdiction shall be met in all of the following categories, in order for a state license proceeding regarding waste to begin:

(a) transfer or transportation, by rail, truck, or other mechanisms;

(b) storage, including any temporary storage at a site away from the generating reactor;

(c) decay in storage;

(d) treatment; and

(e) disposal.

(4) (a) Upon satisfaction of the requirements of Subsection (2)(a), for each category listed in Subsection (3), or satisfaction of the requirements under Subsection

(2)(b), the governor, with the concurrence of the attorney general, shall certify in writing to the executive director of the Department of Environmental Quality that all of the requirements have been met, and that any necessary state licensing processes may begin.

(b) Separate certification under this Subsection (4) shall be given for each category in Subsection (3).

(5) (a) The department shall make, by rule, a determination of the dollar amount of the health and economic costs expected to result from a reasonably foreseeable accidental release of waste involving a transfer facility or storage facility, or during transportation of waste, within the exterior boundaries of the state. The department may initiate rulemaking under this Subsection (5)(a) on or after March 15, 2001.

(b) (i) The department shall also determine the dollar amount currently available to cover the costs as determined in Subsection (5)(a):

(A) under nuclear industry self-insurance;

(B) under federal insurance requirements; and

(C) in federal money.

(ii) The department may not include any calculations of federal money that may be appropriated in the future in determining the amount under Subsection (5)(b)(i).

(c) The department shall use the information compiled under Subsections (5)(a) and (b) to determine the amount of unfunded potential liability in the event of a release of waste from a storage or transfer facility, or a release during the transportation of waste.

(6) (a) State agencies may not, for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste, enter into any contracts or any other agreements prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met for the purposes of a license application proceeding for a storage facility or transfer facility.

(b) Political subdivisions of the state may not enter into any contracts or any other agreements for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste.

(c) This Subsection (6) does not prohibit a state agency from exercising the regulatory authority granted to it by law.

(7) (a) Notwithstanding any other provision of law, any political subdivision may not be formed pursuant to the laws of Utah for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to the satisfaction of the conditions in Subsection (4). These political subdivisions include:

(i) a cooperative;

(ii) a local district authorized by Title 17B, Limited Purpose Local Government Entities - Local Districts;

(iii) a special service district under Title 17D, Chapter 1, Special Service District Act;

(iv) a limited purpose local governmental entities authorized by Title 17,

Counties;

(v) any joint power agreement authorized by Title 11, Cities, Counties, and Local Taxing Units; and

(vi) the formation of a municipality, or any authority of a municipality authorized by Title 10, Utah Municipal Code.

(b) (i) Subsection (7)(a) shall be strictly interpreted. Any political subdivision authorized and formed under the laws of the state on or after March 15, 2001, which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility is formed in violation of Subsection (7)(a).

(ii) If the conditions of Subsection (7)(b)(i) apply, the persons who formed the political subdivision are considered to have knowingly violated a provision of this part, and the penalties of Section 19-3-312 apply.

(8) (a) An organization may not be formed for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(b) A foreign organization may not be registered to do business in the state for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(c) The prohibitions of Subsections (8)(a) and (b) shall be strictly applied, and:

(i) the formation of a new organization or registration of a foreign organization within the state, any of whose purposes are to provide goods, services, or municipal-type services to a storage facility or transfer facility may not be licensed or registered in the state, and the local or foreign organization is void and does not have authority to operate within the state;

(ii) any organization which is formed or registered on or after March 15, 2001, and which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility has been formed or registered in violation of Subsection (8)(a) or (b) respectively; and

(iii) if the conditions of Subsection (8)(c)(ii) apply, the persons who formed the organization or the principals of the foreign organization, are considered to have knowingly violated a provision of this part, and are subject to the penalties in Section 19-3-312.

(9) (a) (i) Any contract or agreement to provide any goods, services, or municipal-type services to any organization engaging in, or attempting to engage in the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state are declared to be against the greater public interest, health, and welfare of the state, by promoting an activity which has the great potential to cause extreme public harm.

(ii) These contracts or agreements under Subsection (9)(a)(i), whether formal or informal, are declared to be void from inception, agreement, or execution as against public policy.

(b) (i) Any contract or other agreement to provide goods, services, or municipal-type services to storage or transfer facilities may not be executed within the state.

(ii) Any contract or other agreement, existing or executed on or after March 15, 2001, is considered void from the time of agreement or execution.

(10) (a) All contracts and agreements under Subsection (10)(b) are assessed an annual transaction fee of 75% of the gross value of the contract to the party providing the goods, services, or municipal-type services to the storage facility or transfer facility or transportation entity. The fee shall be assessed per calendar year, and is payable on a prorated basis on or before the last day of each month in accordance with rules established under Subsection (10)(d), and as follows:

(i) 25% of the gross value of the contract to the department; and

(ii) 50% of the gross value of the contract to the Department of Heritage and Arts, to be used by the Utah Division of Indian Affairs as provided in Subsection (11).

(b) Contracts and agreements subject to the fee under Subsection (10)(a) are those contracts and agreements to provide goods, services, or municipal-type services to a storage or transfer facility, or to any organization engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste to a transfer facility or storage facility, and which:

(i) are in existence on March 15, 2001; or

(ii) become effective notwithstanding Subsection (9)(a).

(c) Any governmental agency which regulates the charges to consumers for services provided by utilities or other organizations shall require the regulated utility or organization to include the fees under Subsection (10)(a) in the rates charged to the purchaser of the goods, services, or municipal-type services affected by Subsection (10)(b).

(d) (i) The department, in consultation with the State Tax Commission, shall establish rules for the valuation of the contracts and assessment and collection of the fees, and other rules as necessary to determine the amount of and collection of the fee under Subsection (10)(a). The department may initiate rulemaking under this Subsection (10)(d)(i) on or after March 15, 2001.

(ii) Persons and organizations holding contracts affected by Subsection (10)(b) shall make a good faith estimate of the fee under Subsection (10)(a) for calendar year 2001, and remit that amount to the department on or before July 31, 2001.

(11) (a) The portion of the fees imposed under Subsection (10) which is to be paid to the Department of Heritage and Arts for use by the Utah Division of Indian Affairs shall be used for establishment of a statewide community and economic development program for the tribes of Native American people within the exterior boundaries of the state who have by tribal procedure established a position rejecting siting of any nuclear waste facility on their reservation lands.

(b) The program under Subsection (11)(a) shall include:

(i) educational services and facilities;

(ii) health care services and facilities;

(iii) programs of economic development;
(iv) utilities;
(v) sewer;
(vi) street lighting;
(vii) roads and other infrastructure; and
(viii) oversight and staff support for the program.

(12) It is the intent of the Legislature that this part does not prohibit or interfere with a person's exercise of the rights under the First Amendment to the Constitution of the United States or under Utah Constitution Article I, Sec. 15, by an organization attempting to site a storage facility or transfer facility within the borders of the state for the placement of high-level nuclear waste or greater than class C radioactive waste.

Amended by Chapter 212, 2012 General Session

19-3-302. Legislative intent.

(1) (a) The state enacts this part to prevent the placement of any high-level nuclear waste or greater than class C radioactive waste in Utah. The state also recognizes that high-level nuclear waste or greater than class C radioactive waste may be placed within the exterior boundaries of the state, pursuant to a license from the federal government, or by the federal government itself, in violation of this state law.

(b) Due to this possibility, the state also enacts provisions in this part to regulate transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level nuclear waste and greater than class C radioactive waste in Utah, thereby asserting and protecting the state's interests in environmental and economic resources consistent with 42 U.S.C.A. 2011 et seq., Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste Policy Act, should the federal government decide to authorize any entity to operate, or operate itself, in violation of this state law.

(2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for siting a large privately owned high-level nuclear waste transfer, storage, decay in storage, or treatment facility away from the vicinity of the reactors. The Atomic Energy Act and the Nuclear Waste Policy Act specifically define authorized storage and disposal programs and activities. The state in enacting this part is not preempted by federal law, since any proposed facilities that would be sited in Utah are not contemplated or authorized by federal law and, in any circumstance, this part is not contrary to or inconsistent with federal law or congressional intent.

(3) The state has environmental and economic interests which do not involve nuclear safety regulation, and which shall be considered and complied with in siting a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility and in transporting these wastes in the state.

(4) An additional primary purpose of this part is to ensure protection of the state from nonradiological hazards associated with any waste transportation, transfer, storage, decay in storage, treatment, or disposal.

(5) The state recognizes the sovereign rights of Indian tribes within the state. However, any proposed transfer, storage, decay in storage, treatment, or disposal facility located on a reservation which directly affects and impacts state interests by

creating off-reservation effects such as potential or actual degradation of soils and groundwater, potential or actual contamination of surface water, pollution of the ambient air, emergency planning costs, impacts on development, agriculture, and ranching, and increased transportation activity, is subject to state jurisdiction.

(6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear waste or higher than class C radioactive waste. The state does have a long history of regulation of radioactive sources and natural resources and in the transfer, storage, treatment, and transportation of materials and wastes throughout the state. The state finds that its interests are even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust lands primarily to avoid state regulation and state authorities under federal law.

(7) (a) This part is not intended to modify existing state requirements for obtaining environmental approvals, permits, and licenses, including surface and groundwater permits and air quality permits, when the permits are necessary under state and federal law to construct and operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility.

(b) Any source of air pollution proposed to be located within the state, including sources located within the boundaries of an Indian reservation, which will potentially or actually have a direct and significant impact on ambient air within the state, is required to obtain an approval order and permit from the state under Section 19-2-108.

(c) Any facility which will potentially or actually have a significant impact on the state's surface or groundwater resources is required to obtain a permit under Section 19-5-107 even if located within the boundaries of an Indian reservation.

(8) The state finds that the transportation, transfer, storage, decay in storage, treatment, and disposal of high-level nuclear waste and greater than class C radioactive waste within the state is an ultra-hazardous activity which carries with it the risk that any release of waste may result in enormous economic and human injury.

Amended by Chapter 297, 2011 General Session

19-3-303. Definitions.

As used in this part:

(1) "Final judgment" means a final ruling or judgment, including any supporting opinion, that determines the rights of the parties and concerning which all appellate remedies have been exhausted or the time for appeal has expired.

(2) "Goods" means any materials or supplies, whether raw, processed, or manufactured.

(3) "Greater than class C radioactive waste" means low-level radioactive waste that has higher concentrations of specific radionuclides than allowed for class C waste.

(4) "Gross value of the contract" means the totality of the consideration received for any goods, services, or municipal-type services delivered or rendered in the state without any deduction for expense paid or accrued with respect to it.

(5) "High-level nuclear waste" has the same meaning as in Section 19-3-102.

(6) "Municipal-type services" includes, but is not limited to:

(a) fire protection service;

(b) waste and garbage collection and disposal;
(c) planning and zoning;
(d) street lighting;
(e) life support and paramedic services;
(f) water;
(g) sewer;
(h) electricity;
(i) natural gas or other fuel; or
(j) law enforcement.

(7) "Organization" means a corporation, limited liability company, partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise, whether or not for profit.

(8) "Placement" means transportation, transfer, storage, decay in storage, treatment, or disposal.

(9) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

(10) "Rule" means a rule made by the department under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(11) "Service" or "services" means any work or governmental program which provides a benefit.

(12) "Storage facility" means any facility which stores, holds, or otherwise provides for the emplacement of waste regardless of the intent to recover that waste for subsequent use, processing, or disposal.

(13) "Transfer facility" means any facility which transfers waste from and between transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal transfer points.

(14) "Waste" or "wastes" means high-level nuclear waste and greater than class C radioactive waste.

Amended by Chapter 382, 2008 General Session

19-3-304. Licensing and approval by governor and Legislature -- Powers and duties of the department.

(1) (a) A person may not construct or operate a waste transfer, storage, decay in storage, treatment, or disposal facility within the exterior boundaries of the state without applying for and receiving a construction and operating license from the state Department of Environmental Quality and also obtaining approval from the Legislature and the governor.

(b) The Department of Environmental Quality may issue the license, and the Legislature and the governor may approve the license, only upon finding the requirements and standards of this part have been met.

(2) The department shall by rule establish the procedures and forms required to submit an application for a construction and operating license under this part.

(3) The department may make rules implementing this part as necessary for the protection of the public health and the environment, including:

(a) rules for safe and proper construction, installation, repair, use, and operation of waste transfer, storage, decay in storage, treatment, and disposal facilities;

(b) rules governing prevention of and responsibility for costs incurred regarding accidents that may occur in conjunction with the operation of the facilities; and

(c) rules providing for disciplinary action against the license upon violation of any of the licensure requirements under this part or rules made under this part.

Enacted by Chapter 348, 1998 General Session

19-3-305. Application for license.

The application for a construction and operating license shall contain information required by department rules, which shall include:

(1) results of studies adequate to:

(a) identify the presence of any groundwater aquifers in the area of the proposed site;

(b) assess the quality of the groundwater of all aquifers identified in the area of the proposed site;

(c) provide reports on the monitoring of vadose zone and other near surface groundwater;

(d) provide reports on hydraulic conductivity tests; and

(e) provide any other information necessary to estimate adequately the groundwater travel distance;

(2) identification of transportation routes and transportation plans within the state and demonstration of compliance with federal, state, and local transportation requirements;

(3) estimates of the composition, quantities, and concentrations of waste to be generated by the activities covered by the license;

(4) the environmental, social, and economic impact of the facility in the area of the proposed facility and on the state as a whole;

(5) detailed engineering plans and specifications for the construction and operation of the facility and for the closure of the facility;

(6) detailed cost estimates and funding sources for construction, operation, and closure of the facility;

(7) a security plan that includes a detailed description of security measures that would be installed in and around the facility;

(8) a detailed description of site suitability, including a description of the geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the site and vicinity;

(9) specific identification of:

(a) the applicant, the wastes to be accepted, the sources of waste, and the owners and operators of the facility; and

(b) the persons or entities having legal responsibility for the facility and wastes;

(10) quantitative and qualitative environmental and health risk assessments for all proposed activities, including transfer, storage, and transportation of wastes;

(11) technical qualifications, including training and experience of the applicant, staff, and personnel who are to engage in the proposed activities;

(12) a quality assurance program, radiation safety program, and environmental monitoring program;

(13) a regional emergency plan for an area surrounding the facility having at least a 75 mile radius, but which may be greater, if required by department rule; and

(14) any other information and monitoring the department determines necessary to insure the protection of the public health and the environment.

Enacted by Chapter 348, 1998 General Session

19-3-306. Information and findings required for approval by the department.

The department may not issue a construction and operating license unless information in the application:

(1) demonstrates the availability and adequacy of emergency services, including medical, security, and fire response, and environmental cleanup capabilities both at and in the region of the proposed site and for areas involved in the transport of wastes within the state;

(2) establishes financial assurance for operation and closure of the facility and for responding to emergency conditions in transportation and at the facility as required by department rules, including proof the applicant:

(a) possesses substantial resources that are sufficient to respond to any reasonably foreseeable injury or loss resulting from operation of the facility; and

(b) will maintain these resources throughout the term of the facility;

(3) provides evidence the wastes will not cause or contribute to an increase in mortality, an increase in illness, or pose a present or potential hazard to human health or the environment;

(4) provides evidence the personnel employed at the facility have appropriate and sufficient education and training for the safe and adequate handling of the wastes;

(5) demonstrates the public benefits of the proposed facility, including the lack of other available sites or methods for the management of the waste that would be less detrimental to the public health or safety or to the quality of the environment;

(6) demonstrates the technical feasibility of the proposed waste management technology;

(7) demonstrates conformance with federal laws, regulations, and guidelines for a waste facility;

(8) demonstrates conclusively that any facility is temporary and provides identified plans and alternatives for closure of the facility with an enforceable schedule and identified dates for closure, including evidence that:

(a) an identified party has irrevocably agreed to accept the waste at the end of the temporary storage period; and

(b) the waste will be moved to another facility;

(9) demonstrates that:

(a) the applicant is not a limited liability company, limited partnership, or other entity with limited liability; and

(b) the applicant and its officers and directors and those principals or other entities that are participating in and associated with the applicant regarding the facility

are willing to accept unlimited strict liability, consistent with federal law, for any financial losses or human losses or injuries resulting from operation of any proposed facility;

(10) provides evidence the applicant has posted a cash bond in the amount of at least two billion dollars or in a greater amount as determined by department rule to be necessary to adequately respond to any reasonably foreseeable releases or losses, or the closure of the facility;

(11) provides evidence the applicant and its officers and directors, the owners or entities responsible for the generation of the waste, principals, and any other entities participating in or associated with the applicant, including landowners, lessors, and contractors, consent in writing to the jurisdiction of the state courts of Utah for any claims, damages, private rights of action, state enforcement actions, or other proceedings relating to the construction, operation, and compliance of the proposed facility; and

(12) demonstrates that any person or entity which sends wastes to a facility shall remain the owner of and responsible for the waste and its ultimate disposal and is willing to accept unlimited, strict liability, consistent with federal law, for any financial or human losses, liabilities, or injuries resulting from the wastes for the entire time period the waste is at the facility.

Enacted by Chapter 348, 1998 General Session

19-3-307. Siting criteria.

(1) The department may not issue a construction and operating license to any waste transfer, storage, decay in storage, treatment, or disposal facility unless the facility location meets the siting criteria under Subsection (2).

(2) The facility may not be located:

(a) within or underlain by:

(i) national, state, or county parks; monuments or recreation areas; designated wilderness or wilderness study areas; or wild and scenic river areas;

(ii) ecologically or scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100-year flood plains;

(iv) areas 200 feet from Holocene faults;

(v) underground mines, salt domes, or salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas within five miles of existing permanent dwellings, residential areas, or other habitable structures, including schools, churches, or historic structures;

(x) areas within five miles of surface waters, including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas within 1,000 feet of archeological sites regarding which adverse

impacts cannot reasonably be mitigated;

(xii) recharge zones of aquifers containing groundwater which has a total dissolved solids content of less than 10,000 mg/l; or

(xiii) drinking water source protection areas;

(b) in areas:

(i) above or underlain by aquifers that:

(A) contain groundwater which has a total dissolved solids content of less than 500 mg/l; and

(B) do not exceed state groundwater standards for pollutants;

(ii) above or underlain by aquifers containing groundwater which has a total dissolved solids content between 3,000 and 10,000 mg/l, when the distance from the surface to the groundwater is less than 100 feet;

(iii) of extensive withdrawal of water, gas, or oil;

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains; or

(vi) where air space use and ground transportation routes present incompatible risks and uses; or

(c) within a distance to existing drinking water wells and watersheds for public water supplies of five years groundwater travel time plus 1,000 feet.

(3) An applicant for a license may request from the department an exemption from any of the siting criteria stated in this section upon demonstration that the modification would be protective of and have no adverse impacts on the public health and the environment.

Enacted by Chapter 348, 1998 General Session

19-3-308. Application fee and annual fees.

(1) (a) Any application for a waste transfer, storage, decay in storage, treatment, or disposal facility shall be accompanied by an initial fee of $5,000,000.

(b) The applicant shall subsequently pay an additional fee to cover the costs to the state associated with review of the application, including costs to the state and the state's contractors for permitting, technical, administrative, legal, safety, and emergency response reviews, planning, training, infrastructure, and other impact analyses, studies, and services required to evaluate a proposed facility.

(2) For the purpose of funding the state oversight and inspection of any waste transfer, storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure, including providing for state Department of Environmental Quality, state Department of Transportation, state Department of Public Safety, and other state agencies' technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic, law enforcement, and emergency resources necessary to respond to these facilities, the owner or operator shall pay to the state a fee as established by department rule under Section 63J-1-504, to be assessed:

(a) per ton of storage cask and high-level nuclear waste per year for storage, decay in storage, treatment, or disposal of high-level nuclear waste;

(b) per ton of transportation cask and high-level nuclear waste for each transfer

of high-level nuclear waste;

(c) per ton of storage cask and greater than class C radioactive waste for the storage, decay in storage, treatment, or disposal of greater than class C radioactive waste; and

(d) per ton of transportation cask and greater than class C radioactive waste for each transfer of greater than class C radioactive waste.

(3) Funds collected under Subsection (2) shall be placed in the Nuclear Accident and Hazard Compensation Account, created in Subsection 19-3-309(3).

(4) The owner or operator of the facility shall pay the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(5) Annual fees due under this part accrue on July 1 of each year and shall be paid to the department by July 15 of that year.

Amended by Chapter 297, 2011 General Session

19-3-309. Restricted accounts.

(1) There is created within the General Fund a restricted account known as the "Nuclear Waste Facility Oversight Account" and referred to in this section as the "oversight account".

(2) (a) The oversight account shall be funded from the fees imposed and collected under Subsections 19-3-308(1)(a) and(b).

(b) The department shall deposit in the oversight account all fees collected under Subsections 19-3-308(1)(a) and(b).

(c) The Legislature may appropriate the funds in this oversight account to departments of state government as necessary for those departments to carry out their duties to implement this part.

(d) The department shall account separately for money paid into the oversight account for each separate application made pursuant to Section 19-3-304.

(3) (a) There is created within the General Fund a restricted account known as the "Nuclear Accident and Hazard Compensation Account," to be referred to as the "compensation account" within this part.

(b) The compensation account shall be funded from the fees assessed and collected under this part, except for Subsections 19-3-308(1)(a) and (b).

(c) The department shall deposit in the compensation account all fees collected under this part, except for those fees under Subsections 19-3-308(1)(a) and (b).

(d) The compensation account shall earn interest, which shall be deposited in the account.

(e) The Legislature may appropriate the funds in the compensation account to the departments of state government as necessary for those departments to comply with the requirements of this part.

(4) On the date when a state license is issued in accordance with Subsection 19-3-301(4)(a), the Division of Finance shall transfer all fees remaining in the oversight account attributable to that license into the compensation account.

Amended by Chapter 107, 2001 General Session

19-3-310. Benefits agreement.

(1) The department may not issue a construction and operating license under this part unless the applicant has entered into a benefits agreement with the department which is sufficient to offset adverse environmental, public health, social, and economic impacts to the state as a whole, and also specifically to the local area in which the facility is to be located.

(2) (a) The benefits agreement shall be attached to and made part of the terms of any license for the facility.

(b) Failure to adhere to the benefits agreement is a ground for the department to take enforcement action against the license, including permanent revocation of the license.

(3) This part may not be construed or interpreted to affect the rights of any person or entity to brings claims against or reach agreements with the applicant for impacts from the facility independent of the benefits agreement.

Enacted by Chapter 348, 1998 General Session

19-3-311. Length of license.

(1) Any construction and operating license shall be issued for a term established by department rule, but the term may not be longer than 20 years.

(2) The term of the license may be extended beyond 20 years only by approval of the department, the Legislature, and the governor.

Enacted by Chapter 348, 1998 General Session

19-3-312. Enforcement -- Penalties.

(1) When the department or the governor has probable cause to believe a person is violating or is about to violate any provision of this part, the department or the governor shall direct the state attorney general to apply to the appropriate court for an order enjoining the person from engaging in or continuing to engage in the activity.

(2) In addition to being subject to injunctive relief, any person who violates any provision of this part is subject to a civil penalty of up to $10,000 per day for each violation.

(3) Any person who knowingly violates a provision of this part is guilty of a class A misdemeanor and subject to a fine of up to $10,000 per day.

(4) Any person or organization acting to facilitate a violation of any provision of this part regarding the regulation of greater than class C radioactive waste or high-level nuclear waste is subject to a civil penalty of up to $10,000 per day for each violation, in addition to being subject to injunctive relief.

(5) Any person or organization who knowingly acts to facilitate a violation of this part regarding the regulation of high-level nuclear waste or greater than class C radioactive waste is guilty of a class A misdemeanor and is subject to a fine of up to $10,000 per day.

(6) (a) This section does not impose a civil or criminal penalty on any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level

nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (6)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any civil or criminal liability or penalty due to membership in the association.

Amended by Chapter 107, 2001 General Session

19-3-313. Reciprocity.

Waste may not be transported into and transferred, stored, decayed in storage, treated, or disposed of in the state if the state of origin of the waste or the state in which the waste was generated prohibits or limits similar actions within its own boundaries.

Enacted by Chapter 348, 1998 General Session

19-3-314. Local jurisdiction.

This part does not preclude any political subdivision of the state from establishing additional requirements under applicable state and federal law.

Enacted by Chapter 348, 1998 General Session

19-3-315. Transportation requirements.

(1) A person may not transport wastes in the state, including on highways, roads, rail, by air, or otherwise, without:

(a) having received approval from the state Department of Transportation; and

(b) having demonstrated compliance with rules of the state Department of Transportation.

(2) The Department of Transportation may:

(a) make rules requiring a transport and route approval permit, weight restrictions, tracking systems, and state escort; and

(b) assess appropriate fees as established under Section 63J-1-504 for each shipment of waste, consistent with the requirements and limitations of federal law.

(3) The Department of Environmental Quality shall establish any other transportation rules as necessary to protect the public health, safety, and environment.

(4) Unless expressly authorized by the governor, with the concurrence of the Legislature, an easement or other interest in property may not be granted upon any lands within the state for a right of way for any carrier transportation system that:

(a) is not a class I common or contract rail carrier organized and doing business prior to January 1, 1999; and

(b) transports high level nuclear waste or greater than class C radioactive waste to a storage facility within the state.

Amended by Chapter 183, 2009 General Session

19-3-316. Cost recovery.

The owner or transporter or any person in possession of waste is liable, consistent with the provisions of federal law, for any expense, damages, or injury incurred by the state, its political subdivisions, or any person as a result of a release of the waste.

Enacted by Chapter 348, 1998 General Session

19-3-317. Severability.

If any provision of this part is held to be invalid, unconstitutional, or otherwise held to be inconsistent with law, the remainder of this part is not affected and remains in full force.

Enacted by Chapter 348, 1998 General Session

19-3-318. No limitation of liability regarding businesses involved in high level radioactive waste.

(1) As used in this section:

(a) "Controlling interest" means:

(i) the direct or indirect possession of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting interests, by contract, or otherwise; or

(ii) the direct or indirect possession of a 10% or greater equity interest in an organization.

(b) "Equity interest holder" means a shareholder, member, partner, limited partner, trust beneficiary, or other person whose interest in an organization:

(i) is in the nature of an ownership interest;

(ii) entitles the person to participate in the profits and losses of the organization; or

(iii) is otherwise of a type generally considered to be an equity interest.

(c) "Organization" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise or activity, whether or not for profit.

(d) "Parent organization" means an organization with a controlling interest in another organization.

(e) (i) "Subject activity" means:

(A) to arrange for or engage in the transportation or transfer of high level nuclear waste or greater than class C radioactive waste to or from a storage facility in the state; or

(B) to arrange for or engage in the operation or maintenance of a storage facility or a transfer facility for that waste.

(ii) "Subject activity" does not include the transportation of high level nuclear waste or greater than class C radioactive waste by a class I railroad that was doing business in the state as a common or contract carrier by rail prior to January 1, 1999.

(f) "Subsidiary organization" means an organization in which a parent

organization has a controlling interest.

(2) (a) The Legislature enacts this section because of the state's compelling interest in the transportation, transfer, and storage of high level nuclear waste and greater than class C radioactive waste in this state. Legislative intent supporting this section is further described in Section 19-3-302.

(b) Limited liability for equity interest holders is a privilege, not a right, under the law and is meant to benefit the state and its citizens. An organization engaging in subject activities has significant potential to affect the health, welfare, or best interests of the state and should not have limited liability for its equity interest holders. To shield equity interest holders from the debts and obligations of an organization engaged in subject activities would have the effect of attracting capital to enterprises whose goals are contrary to the state's interests.

(c) This section has the intent of revoking any and all statutory and common law grants of limited liability for an equity interest holder of an organization that chooses to engage in a subject activity in this state.

(d) This section shall be interpreted liberally to allow the greatest possible lawful recourse against an equity interest holder of an organization engaged in a subject activity in this state for the debts and liabilities of that organization.

(e) This section does not reduce or affect any liability limitation otherwise granted to an organization by Utah law if that organization is not engaged in a subject activity in this state.

(3) Notwithstanding any law to the contrary, if a domestic or foreign organization engages in a subject activity in this state, no equity interest holder of that organization enjoys any shield or limitation of liability for the acts, omissions, debts, and obligations of the organization incurred in this state. Each equity interest holder of the organization is strictly and jointly and severally liable for all these obligations.

(4) Notwithstanding any law to the contrary, each officer and director of an organization engaged in a subject activity in this state is individually liable for the acts, omissions, debts, and obligations of the organization incurred in this state.

(5) (a) Notwithstanding any law to the contrary, if a subsidiary organization is engaged in a subject activity in this state, then each parent organization of the subsidiary is also considered to be engaged in a subject activity in this state. Each parent organization's equity interest holders and officers and directors are subject to this section to the same degree as the subsidiary's equity interest holders and officers and directors.

(b) Subsection (5)(a) applies regardless of the number of parent organizations through which the controlling interest passes in the relationship between the subsidiary and the ultimate parent organization that controls the subsidiary.

(6) This section does not excuse or modify the requirements imposed upon an applicant for a license by Subsection 19-3-306(9).

Enacted by Chapter 190, 1999 General Session

19-3-319. State response to nuclear release and hazards.

(1) The state finds that the placement of high-level nuclear waste inside the exterior boundaries of the state is an ultra-hazardous activity which may result in

catastrophic economic and environmental damage and irreparable human injury in the event of a release of waste, and which may result in serious long-term health effects to workers at any transfer or storage facility, or to workers involved in the transportation of the waste.

(2) (a) The state finds that procedures for providing funding for the costs incurred by any release of waste, or for the compensation for the costs of long-term health effects are not adequately addressed by existing law.

(b) Due to these concerns, the state has established a restricted account under Subsection 19-3-309(3), known as the Nuclear Accident and Hazard Compensation Account, and referred to in this section as the compensation account. One of the purposes of this account is to partially or wholly compensate workers for these potential costs, as funds are available and appropriated for these purposes.

(3) (a) The department shall require the applicant, and parent and subsidiary organizations of the applicant, to pay to the department not less than 75% of the unfunded potential liability, as determined under Subsection 19-3-301(5), in the form of cash or cash equivalents. The payment shall be made within 30 days after the date of the issuance of a license under this part.

(b) The department shall credit the amount due under Subsection 19-3-306(10) against the amount due under this Subsection (3).

(c) If the payments due under this Subsection (3) are not made within 30 days, as required, the executive director of the department shall cancel the license.

(4) (a) The department shall also require an annual fee from the holder of any license issued under this part. This annual fee payment shall be calculated as:

(i) the aggregate amount of the annual payments required by Title 34A, Chapter 2, Workers' Compensation Act, of the licensee and of all parties contracted to provide goods, services, or municipal-type services to the licensee, regarding their employees who are working within the state at any time during the calendar year; and

(ii) multiplied by the number of storage casks of waste present at any time and for any period of time within the exterior borders of the state during the year for which the fee is assessed.

(b) (i) The licensee shall pay the fee under Subsection (4)(a) to the department. The department shall deposit the fee in the compensation account created in Subsection 19-3-309(3).

(ii) The fee shall be paid to the department on or before March 31 of each calendar year.

(5) The department shall use the fees paid under Subsection (4) to provide medical or death benefits, or both, as is appropriate to the situation, to the following persons for death or any long term health conditions of an employee proximately caused by the presence of the high-level nuclear waste or greater than class C radioactive waste within the state, or a release of this waste within the state that affects an employee's physical health:

(a) any employee of the holder of any license issued under this part, or employees of any parties contracting to provide goods, services, transportation, or municipal-type services to the licensee, if the employee is within the state at any time during the calendar year as part of his employment; or

(b) that employee's family or beneficiaries.

(6) Payment of the fee under Subsection (4) does not exempt the licensee from compliance with any other provision of law, including Title 34A, Chapter 2, regarding workers' compensation.

(7) (a) An agreement between an employer and an employee, the employee's family, or beneficiaries requiring the employee to waive benefits under this section, requiring the employee to seek third party coverage, or requiring an employee contribution is void.

(b) Any employer attempting to secure any agreement prohibited under Subsection (7)(a) is subject to the penalties of Section 19-3-312.

(8) (a) The department, in consultation with the Division of Industrial Accidents within the Labor Commission, shall by rule establish procedures regarding application for benefits, standards for eligibility, estimates of annual payments, and payments.

(b) Payments under this section are in addition to any other payments or benefits allowed by state or federal law, notwithstanding provisions in Title 34A, Chapter 2, regarding workers' compensation.

(c) Payments or obligations to pay under this section may not exceed funds appropriated for these purposes by the Legislature.

(9) (a) Any fee or payment imposed under this section does not apply to any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (9)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any fee or payment under this section due to membership in the association.

Enacted by Chapter 107, 2001 General Session

19-3-320. Efforts to prevent siting of any nuclear waste facility to include economic development study regarding Native American reservation lands within the state.

(1) It is the intent of the Legislature that the department, in its efforts to prevent the siting of a nuclear waste facility within the exterior borders of the state, include in its work the study under Subsection (2) and the report under Subsection (3).

(2) It is the intent of the Legislature that the Department of Environmental Quality, in coordination with the office of the governor, and in cooperation with the Departments of Heritage and Arts, Human Services, Health, Workforce Services, Agriculture and Food, Natural Resources, and Transportation, the state Office of Education, and the Board of Regents:

(a) study the needs and requirements for economic development on the Native American reservations within the state; and

(b) prepare, on or before November 30, 2001, a long-term strategic plan for economic development on the reservations.

(3) It is the intent of the Legislature that this plan, prepared under Subsection

(2)(b), shall be distributed to the governor and the members of the Legislature on or before December 31, 2001.

Amended by Chapter 212, 2012 General Session